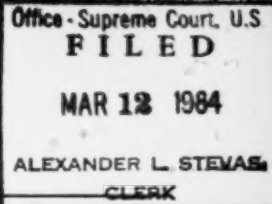


No. 83-1230



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

CAPITOL HILL DODGE, INC., et al

Petitioners

v.

CHRYSLER CREDIT CORPORATION

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

OPPOSITION BY PETITIONERS TO MOTION FOR DAMAGES

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OPPOSITION BY PETITIONERS TO MOTION FOR DAMAGES

Petitioners, CAPITOL HILL DODGE, INC. and ELLIOT DENNIBERG, by counsel, respectfully move that this Honorable Court deny Respondent's Motion for Damages in all respects for the reasons set forth below.

Supreme Court Rule 49.2 states that "when an appeal or Petition for Writ of Certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages" (emphasis added). Petitioners' Petition for Writ of Certiorari is not frivolous and damages should not be awarded to Respondent.

This Court has developed standards of which to test a Petition for "frivolousness." These standards are met in only a few rare cases. A "frivolous" Petition is one in which the Petitioner "had no defense." Prentice v. Pickersgill, 73 U.S. 511 (1868). A "frivolous" Petition has "no plausible grounds," Texas & P.R. Co. v. Volk, 151 U.S. 73 at 75 (1894), and the "inference would seem to be irresistible"

that delay was the only motive. Barrow v. Hill, 54 U.S. 54 at 56 (1852) (emphasis added).

These standards are clearly not met in the case at hand. Petitioners argue throughout their Petition that the District Court's findings were "clearly erroneous." Petitioners may have had the benefit of two evidentiary hearings but both hearings were before the same finder of fact, the Honorable John Penn, United States District Judge for the United States District Court for the District of Columbia, and on both occasions Petitioners' opportunity to present evidence was severely and wrongfully limited.

The decision of the Honorable John Penn, resulting from Petitioners' first evidentiary hearing on or before the 25th and 26th days of October 1979, was reversed by the United States Court of Appeals for the District of Columbia Circuit explicitly on the grounds that evidence presented by Petitioners had been wrongfully excluded (R-650-655).

At Petitioners' second evidentiary hearing on or about the 28th day of May 1981, the Honorable John Penn again excluded material and relevant evidence and refused to take into account the content and credibility of the testimony the Court of Appeals had ordered to be heard.

Petitioners satisfied completely the requirements of Supreme Court Rule 17 and presented various questions of evidentiary law and due process. Petitioners set forth numerous examples of "arbitrary and capricious" and "clearly erroneous" behavior by the Courts below.

Should Petitioners' Petition for Writ of Certiorari be denied, Respondent will be compensated for any delay in interest and Petitioners, along with Respondent, were forced to incur substantial expense in order to file their Petition.

WHEREFORE, Petitioners respectfully request that this Honorable Court deny Respondent's Motion for Damages in all respects and further

grant a Writ of Certiorari and reverse and vacate the Orders of the United States District Court for the District of Columbia dated November 12 and 29, 1982, and further grant to Petitioners such other and further relief as may be just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, postage prepaid, this 12th day of March 1984, to John T. Coyne, Esq., Jordan Coyne Savits & Lopata, 1030 15th Street, N.W., Wash., D.C. 20005.

Jeffrey M. Frost